

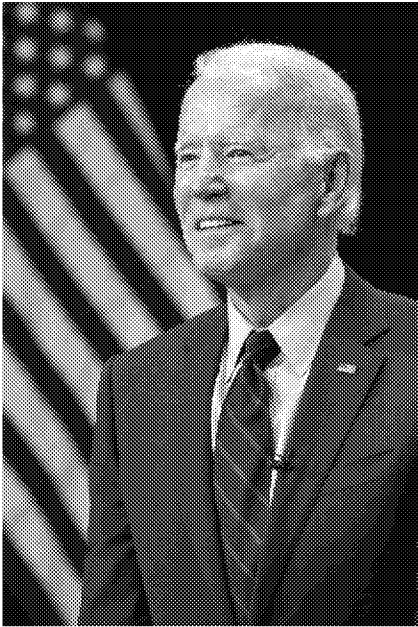
MCLE's 22nd Annual Environmental, Land Use, & Energy Law Conference: EPA Update March 4, 2021

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U.S. Environmental Protection Agency
Region 1 -- New England



Outline of presentation

1. National updates
 - a) New leadership
 - b) Notable case and regulatory updates
2. Region 1 overview
3. Region 1 notable work



CLIMATE

President Biden will take swift action to tackle the climate emergency. The Biden Administration will ensure we meet the demands of science, while empowering American workers and businesses to lead a clean energy revolution.

Climate is an “Immediate
Presidential Priority” of President
Biden

Photo source: <https://www.whitehouse.gov/>

Climate priority screenshot source: <https://www.whitehouse.gov/priorities/>

EQUITY

"[T]he Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity."

- Executive Order 13985 (Jan. 20, 2021)

Order	Topic
13985	<u>Advancing Racial Equity and Support for Underserved Communities Through the Federal Government</u>
13990	<u>Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis</u>
13992	<u>Revocation of Certain Executive Orders Concerning Federal Regulation</u>
14007	<u>President's Council of Advisors on Science and Technology</u>
14008	<u>Tackling the Climate Crisis at Home and Abroad</u>
14013	<u>Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration</u>
14018	<u>Executive Order on the Revocation of Certain Presidential Actions</u>

Relevant Executive Orders

Date	Action
Jan. 20	<u>Regulatory Freeze Pending Review</u>
Jan. 20	<u>Modernizing Regulatory Review</u>
Jan. 20	<u>Paris Climate Agreement</u>
Jan. 20	<u>Agency Actions for Review</u>
Jan. 27	<u>Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking</u>
Feb. 11	<u>Biden-Harris Administration Launches American Innovation Effort to Create Jobs and Tackle the Climate Crisis</u>

Relevant Presidential Actions



Biden's EPA nominee vows 'urgency' on climate change

Michael Regan, who would be the first Black man to serve as EPA administrator, promises to seek consensus as he pursues an ambitious agenda

<https://www.washingtonpost.com/climate-environment/2021/02/03/epa-regan-hearing/>

Michael Regan

Nominated for Administrator

Photo source: <https://www.whitehouse.gov/administration/cabinet/>

Headline screenshot source: Source: <https://www.washingtonpost.com/climate-environment/2021/02/03/epa-regan-hearing/>

Jane Nishida

Acting Administrator

Jane currently serves as the Principal Deputy Assistant Administrator for the Office of International and Tribal Affairs (OITA) where she is responsible for the full range of EPA's international and tribal programs. Jane has over 30 years of environmental experience working in federal and state government, and international and nongovernmental organizations. Prior to joining EPA in 2011, she served as the Senior Environmental Institutions Specialist at the World Bank, and from 1995 to 2002, she served as the Secretary of Maryland's Department of the Environment. Jane received a Bachelor of Arts in International Affairs from Lewis & Clark College in Portland, Oregon, and a Juris Doctorate from Georgetown Law Center in Washington, D.C.



Image source: <https://it.usembassy.gov/bologna-g7-ministerial-u-s-delegation-jane-nishida/>

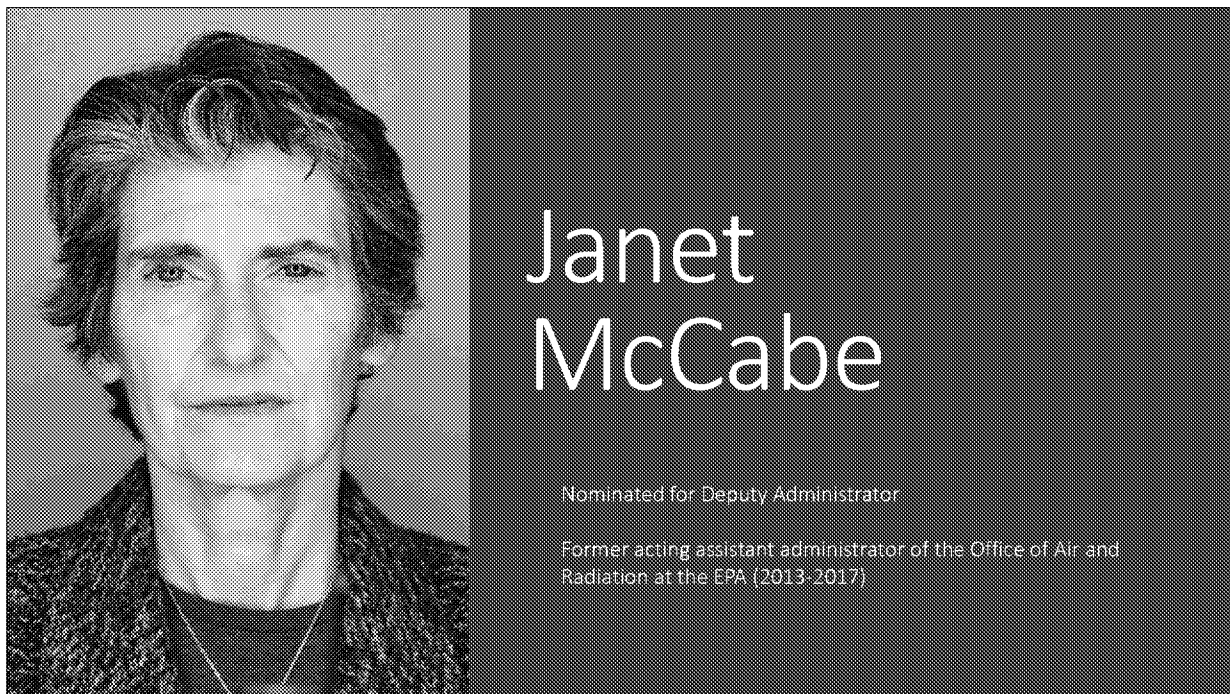


Photo source: <https://news.iu.edu/stories/2021/01/iu/releases/15-janet-mccabe-nominated-deputy-administrator-of-epa.html>

Melissa Hoffer

Acting General Counsel

- Former Chief of Energy & Environment Bureau, and before that Chief of Environmental Protection Division, at Mass. Attorney General's Office
- Former Vice President and Director of Healthy Communities and Environmental Justice Program at Conservation Law Foundation
- Former Junior Partner in the Environmental Department at WilmerHale



Photo source: <https://www.gettyimages.dk/detail/news-photo/lawyer-melissa-hoffer-from-boston-gestures-during-the-news-photo/56698281>

Other "key members of the agency's incoming leadership team who will advance the Biden-Harris administration's agenda to tackle the climate crisis, advance environmental justice and create clean energy jobs":

<https://www.epa.gov/newsreleases/epa-welcomes-members-biden-harris-leadership-team>

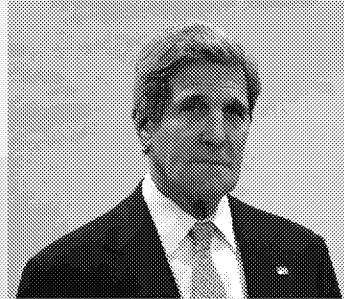
<https://www.epa.gov/newsreleases/epa-welcomes-additional-members-biden-harris-leadership-team>

<https://www.epa.gov/newsreleases/epa-announces-additional-biden-harris-appointees-0>

"A big day for Boston"



Gina McCarthy
White House National Climate
Advisor



John Kerry
Special Presidential Envoy for
Climate

Gina McCarthy photo source: <https://www.energy.gov/contributors/gina-mccarthy>

John Kerry photo source: <https://www.state.gov/biographies/john-kerry/>

- Under the 2020 Navigable Waters Protection Rule, four categories of waters are federally regulated:

- 1) The territorial seas and traditional navigable waters,
- 2) Perennial and intermittent tributaries to those waters,
- 3) Certain lakes, ponds, and impoundments, and
- 4) Wetlands adjacent to jurisdictional waters.

CWA
Geographic
Jurisdiction:
Waters of the
United States
(WOTUS) Rule

- Federal agencies may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 water quality certification is issued, verifying compliance with water quality requirements, or certification is waived.
- States and authorized tribes where the discharge would originate are generally responsible for issuing water quality certifications.
- New regulation went into effect in September 2020.

New CWA 401 rule

- On January 19, 2021, the D.C. Circuit vacated and remanded the ACE rule.

Affordable Clean Energy (ACE) rule

- “The Final Rule was a substantive rule. EPA did not provide good cause to exempt the Final Rule from the APA’s 30-day notice requirement. EPA’s decision to make the Final Rule immediately effective on publication was “arbitrary, capricious” and “otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).”

- “The Court declares, therefore, that the Final Rule is ineffective until 30 days from its January 6, 2021, date of publication in the Federal Register: February 5, 2021”

Scientific Integrity Rule

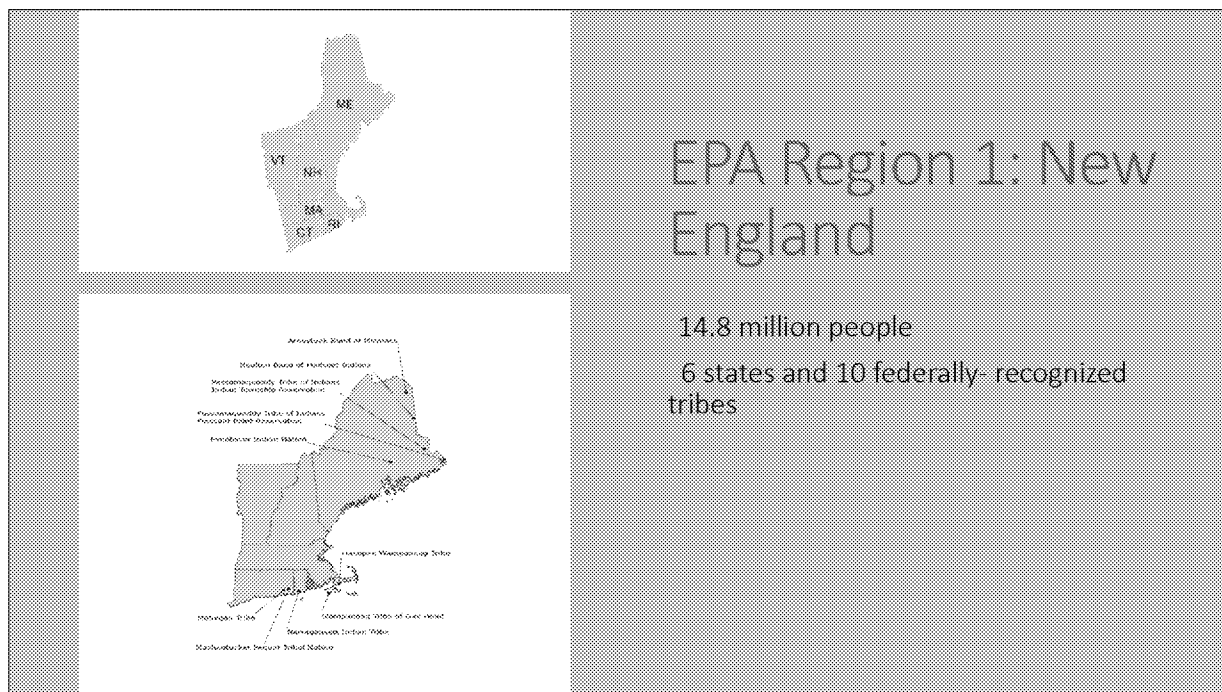


Image Sources:

<https://www.epa.gov/aboutepa/epa-region-1-new-england>

<https://www.epa.gov/tribal/indian-lands-us-epa-region-1>



Deb Szaro

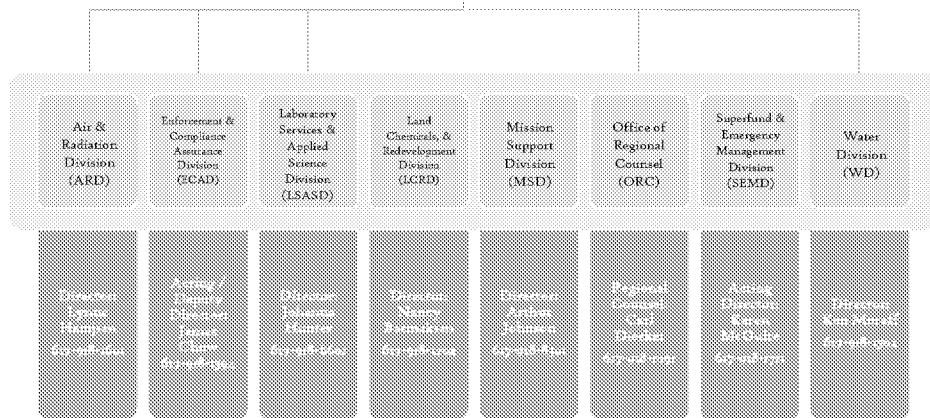
Acting Regional
Administrator

Deb has served as Deputy Regional Administrator since 2014. Prior to her current role, Deb directed the Environmental Science and Assessment Division and managed Region 2's Edison, New Jersey facility. There she was responsible for laboratory and field operations and the generation of data used to support agency decisions. Deb began her EPA career in 1987 in Region 1 as a Laboratory Technical Project Officer and Quality System Team Leader. She has served on many national work groups including the Forum for Environmental Measurements, where she advocated for the use of sound science in decision-making processes. Before joining EPA, Deb worked at the MIT Chemistry Lab and managed the environmental consulting department at Cambridge Analytical Associates.

OFFICE OF REGIONAL ADMINISTRATOR

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DEB SZARO: ACTING REGIONAL ADMINISTRATOR
BRYAN OLSON: ACTING DEPUTY REGIONAL ADMINISTRATOR



RCRA Cleanup: GE- Housatonic

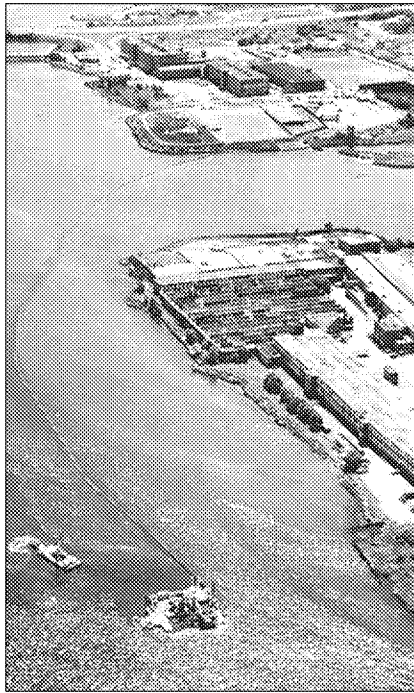
- In 2016, EPA had issued a RCRA Corrective Action Permit requiring GE to remediate PCB contamination in the River and to ship all excavated material off-site to licensed TSCA facilities. The 2016 Permit was valued at \$613M (in 2010 dollars).
- GE and four other parties appealed the 2016 Permit to EPA's Environmental Appeals Board.
- The EAB, in 2018, agreed with the Region on virtually all issues challenged, except that it had questions for the Region on its selection of off-site disposal for all excavated material.
- In response to the EAB decision, the Region organized mediated negotiations with the EAB parties.
- Those negotiations resulted in a February 2020 Settlement Agreement agreed to by EPA, GE, the State of Connecticut, the six most affected Massachusetts municipalities, two environmental groups and a local homeowner. The Settlement Agreement included significant cleanup enhancements, two dam removals, an expedited start to cleanup design, EPA commitments on innovative PCB-remediation technologies, and economic development funding from GE to affected communities.
- In December 2020, R1 issued a Revised Final RCRA Permit Modification that incorporates the Settlement Agreement components. The 2020 Permit is valued at over \$575 M in 2020 dollars (or \$456 M in 2010 dollars).
- One set of parties (the Housatonic River Initiative and the Housatonic Environmental Action League) is appealing to the EAB, with a petition due 3/5/21.

Cleanup webpage:

Press Release:



Photo source: <https://www.epa.gov/ge-housatonic/rest-river-ge-pittsfieldhousatonic-river-site#Photos>



Superfund Cleanup: New Bedford Harbor

- After more than 17 years of effort, the Superfund dredging of PCB-contaminated sediments was completed in March 2020.
- EPA has removed a total of approximately one million cubic yards of PCB-contaminated sediment from the harbor.
- The expedited work to remove and safely dispose of contaminated sediment from New Bedford Harbor was made possible by a historic 2012 settlement reached between the federal and state governments, and AVX Corp. for \$366.25 million, plus interest, for cleanup costs in the New Bedford Harbor Superfund Site.
- As a result, EPA's rail-accessible facility is no longer needed and has been decommissioned and transferred to the City of New Bedford to allow shoreline redevelopment in the port's working waterfront. This is a significant advance for the City and its ongoing economic revitalization.

Cleanup webpage: <https://www.epa.gov/new-bedford-harbor-superfund-site>

Press release: <https://www.epa.gov/press-releases/epa-completes-dredging-new-bedford-harbor-superfund-site>

Photo source: <https://www.flickr.com/photos/usepagov/5201419209/in/album-72157625453872678/> (linked from EPA cleanup page)

Superfund Cleanup: Wells G&H



- On July 14, 2020 EPA and the Department of Justice announced a proposed cleanup settlement between the United States and 16 parties in the southwestern portion of the Wells G&H Superfund Site, known as Operable Unit 4 (OU4) or the "Southwest Properties" (SWP), in Woburn, Massachusetts. The settlement was approved by the court September 14, 2020.
- EPA has been engaged at this site for decades, and this agreement will continue the cleanup of contamination caused by former industrial activities at the site, further protecting public health and the environment.
- EPA estimates that the remedial work will cost approximately \$19.1 million.
- Cleanup webpage: <https://www.epa.gov/superfund/cleanupinfo.cfm?id=8100749>
- Press release: <https://www.epa.gov/newsroom/proposed-settlement-reached-soil-sediment-and-groundwater-cleanup-wells-g-h-superfund>

NPDES permit: Springfield, MA

- The Springfield NPDES permit sets out the analytical framework for limiting total nitrogen from 96 out-of-basin POTWs that contribute to severe eutrophication in Long Island Sound.
- The permit was appealed by the City of Springfield, with the State of Connecticut, Save the Sound and the Connecticut River Conservancy participating as amici. The case has been briefed and the parties are awaiting oral argument. The successful defense of this permit will help streamline agency permitting in Massachusetts and New Hampshire. Intended to ensure full implementation of the 2000 LIS TMDL for Total Nitrogen and address combined sewer overflow (CSO) issues.

*Region's responsive brief can be found at:
https://eoc-emite.epa.gov/ea/EAB_Web_Docket.nsf/Filing%20By%20Appeal%20Number/11443A888232A1C88525863B006D4491?OpenDocument



Re-issued NPDES Permit for Pilgrim Nuclear Power Station in Plymouth

Pilgrim stopped generating electricity in May 2019

Some NPDES activities continue, including stormwater discharges, reduced cooling water use under CWA § 316

EPA re-issued NPDES Permit in Jan. 2020

87% reduction in volume of cooling water withdrawn from Cape Cod Bay

98% reduction in heat load discharged to CC Bay

More stringent limits on chlorine discharge

Increased SW sampling and more stringent limits

Does not authorize discharges associated with dismantlement or decontamination during decommissioning

Among first R1 permits to implement EPA's 2014 CWA § 316(b) regulations for existing facilities

Holtec and Entergy appealed to EAB in March 2020

Settlement reached in Nov. 2020

Maintains heat load discharge reduction and SW sampling

Supports efforts to further reduce cooling water volume, heat load, and chlorine use

Massachusetts Small MS4 General Permit

- EPA issued a general permit for small Massachusetts and New Hampshire separate storm sewer systems (MS4s) in 2016 and 2017, respectively.
 - D.C. Circuit challenges by environmental groups, municipalities, and other regulated entities.
 - 2017-2020: Mediation
 - 2020: Settlement agreements executed; permit modifications proposed.
- EPA made final permit modifications in Dec. 2020; effective in Jan. 2021.
- D.C. Circuit dismissed the permit challenges in early Feb. 2021.
- Link to permit: <https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit>
- MS4 webpage: <https://www3.epa.gov/region1/npdes/stormwater/ma/2016fpd/final-2016-ma-sm-s4-gp-mod.pdf>

Enforcement

EPA Region 1 Enforcement Results Chart, FY20

ALL CASES				
FY 13-19				FY 20
	Low	High	Average	
Conclusions	93	111	99	118
Initiations	87	107	96	106

CWA NPDES				
FY 13-18				FY 20
	Low	High	Average	
AOs	7	28	14	39
APOs	2	13	6	4

112r				
FY 13-18				FY 20
	Low	High	Average	
AOs	1	10	6	10
APOs	3	10	9	7

TSCA				
FY 13-18				FY 20
	Low	High	Average	
APOs	8	16	15	12

Penalties & Injunctive Relief				
FY 13-18				FY 20
	Low	High	Average	
Penalties	\$1,977,087.00	\$8,943,891.00	\$ 4,156,471.00	\$2,171,590.00
Inj. Relief	\$60,389,105.00	\$998,033,525.00	\$ 429,485,543.00	\$459,818,791.00
Regulatory Enforcement injunctive relief since FY 1995				\$6.3 Billion

Clean Air Act – Chemical Accident Prevention (CAA Section 112(r))

Purpose is to prevent and mitigate accidental releases

Focus is on chemicals that, if released, could cause:

- imminent death,
- serious injury,
- or substantial property damage

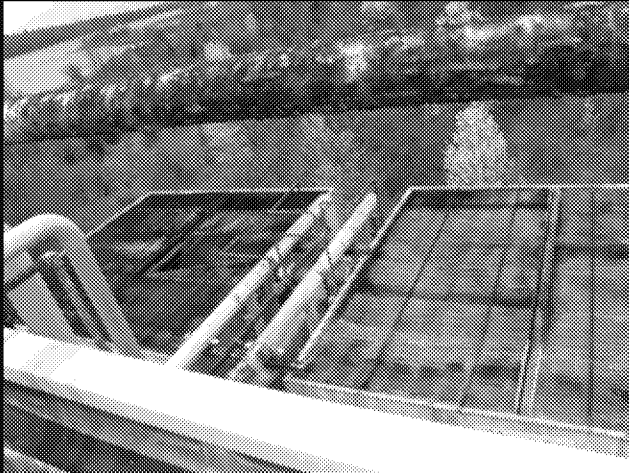
from short term releases



Recent CAA 112(r) civil settlements

Northern Pelagic, New Bedford, MA: \$220,000 penalty for failure to file risk management plan (RMP), among other violations, at seafood plant. Located in urban area.

ITW Polymers Sealants North America Inc.: \$345,000 penalty and requirement to complete certain repair and maintenance work. Many of the alleged GDC and RMP violations involved inadequate testing and maintenance of outdoor chemical storage tanks and piping.



Excessive Corrosion on Ammonia Piping (2017)

United States v. J.P.
Lillis Enterprises,
Inc., d/b/a Cape
Cod Ice (D.R.I.)

- Cape Cod Ice pleaded guilty to knowing violations of Clean Air Act § 112(r) at its East Providence, Rhode Island facility.

Sprague Resources LP

- Clean Air Act case
- The Department of Justice lodged a consent decree on behalf of EPA and Massachusetts under which Under Sprague Resources LP will take steps to limit emissions of volatile organic compounds (VOCs) from oil storage tanks in Everett, Quincy, and New Bedford, Massachusetts.
- The consent decree requires payment of penalties (\$205,000 to the U.S. government and \$145,000 to the Commonwealth of Massachusetts) and is designed to bring Sprague into compliance with federal limitations on the emission of VOCs from heated #6 oil and asphalt tanks, which can pose public health risks.

<https://www.epa.gov/enforcement/sprague-clean-air-act-settlement-information-sheet>

Press release: <https://www.epa.gov/pressrelease/proposed-settlement-united-states-and-massachusetts-will-help-resolve-epc-union>

Consent decree: <https://www.epa.gov/sites/default/files/2020-05/docs/settlement/spragueresources-a-01.pdf>

Eversource

- Toxic Substances Control Act (TSCA) case.
- Eversource Energy agreed to pay \$129,428 to settle several counts of allegedly violating federal PCB regulations at sites in Connecticut and Massachusetts.
- The case stems from several transformer spills at locations in Massachusetts and Connecticut, involving improper manifesting of PCB remediation waste, improper storage of a PCB transformer, and improper disposal of PCBs.
- The spills occurred during 2019 in Bridgewater and Portland, Connecticut, and Lee, Massachusetts.

Press release: <https://www.eversource.com/news-releases/eversource-compliance-federal-pcb-laws-under-agreement-ecac>

Emergency Planning and Community Right to Know (EPCRA)

Respondent	State	Alleged violation	Penalty
Electric Boat Corp.	RI	Failure to timely provide EPCRA 313 reports for a toxic chemical used at the facility during calendar years 2015, 2016, and 2017	\$59,001
Electric Motion Co.	CT	Failure to timely provide EPCRA 313 reports for ammonia used in calendar years 2015 and 2016.	\$36,006
Bourdon Forge Co.	CT	Failure to timely provide EPCRA 313 reports for chromium, copper, and nickel processed at the facility in calendar year 2018.	\$54,705
J.J. Ryan Corp.	CT	Failure to timely provide EPCRA 313 reports for chromium, manganese, and ethylene glycol processed or otherwise used at the facility in calendar year 2018.	\$33,371

Questions?

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